

John C. Byer, Ph.D.

Washington, DC

June 2, 2005

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF NEW YORK

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4 BARBARA SCHWAB, et al., :
5 Plaintiffs, : Civil Action No.
6 v. : 04-1945

7 PHILIP MORRIS USA, INC., et al., :
8 Defendants. :

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10 Friday, June 2, 2005
11 Washington, D.C.

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13 Deposition of JOHN C. BEYER, Ph.D., commencing
14 at 9:05 a.m., held at the offices of Arnold & Porter,
15 555 Twelfth Street, N.W., Washington, D.C., before
16 Keith Wilkerson, a notary public in and for the
17 District of Columbia.

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<p style="text-align: right;">Page 10</p> <p>1 February and the other at the end of March. I read 2 again in part or in full the complaint and other 3 legal documents that have been provided in this case, 4 some of the reports by other experts that the 5 plaintiffs have offered, the underlying methodology 6 and data that were used for the estimation of 7 damages, and I met briefly with plaintiff's counsel 8 and off and on with the senior staff members of 9 Nathan Associates, who assisted me in the analysis 10 and research leading up to the two reports. 11 Q. Besides the complaint, what other legal 12 documents did you read? 13 A. I reviewed, and this is again -- answers 14 to interrogatories by the defendants. I think, along 15 with the complaint, those are the only legal 16 documents in this case, yes. 17 Q. The interrogatory answers to which you 18 refer, are those the answers in which defendants 19 provide estimates of operating profits? 20 A. Well, it's a variety of answers to 21 interrogatories. Some concern revenues and profits 22 of selected defendants for their production and sale</p>	<p style="text-align: right;">Page 12</p> <p>1 available. 2 Q. So at this point in time, you haven't 3 identified any errors or problems with the 4 calculations that defendants have provided. 5 A. I haven't looked for any. Therefore, I 6 haven't identified them. 7 Q. Now, you mentioned that the estimates 8 that you've been provided are not yet complete. What 9 do you mean by that? What's missing? 10 A. The answers to -- the interrogatories? 11 Some of the defendants have not yet provided them, 12 and right offhand I can't recall which ones. The 13 absence of that data, which I understand is in the 14 process of being developed, will be completed by the 15 defendants at some time in the future. 16 Q. Are there any other respects in which 17 defendants' estimates of profits or revenues are 18 incomplete, in your opinion? 19 A. Again, I have not reviewed the underlying 20 information for basic integrity where a defendant has 21 provided information or data on revenues and costs 22 and hence operating profits by categories of their</p>
<p style="text-align: right;">Page 11</p> <p>1 of light cigarettes, but also there were some other 2 answers to interrogatories that concerned pricing or 3 general statements, not numbers, but general 4 statements about the cost of manufacturing light 5 cigarettes compared to full flavored cigarettes. 6 Q. You have reviewed the defendants -- the 7 estimates the defendants have provided of their 8 revenues and profits. Correct? 9 A. Those that did provide it. I've only -- 10 I think there are estimates of operating profits for 11 light cigarettes by two, maybe three defendants thus 12 far that have come in the form of interrogatories. 13 Q. And in reviewing those that you've seen, 14 did you see any problems or errors or anything 15 questionable in those calculations? 16 A. I wasn't reviewing them for that goal. I 17 was trying to simply see what information had come to 18 our attention through the interrogatories and was 19 assessing it for its coverage or completeness. The 20 fact that that set of information is not yet complete 21 means that I'm not going to spend time doing the 22 detailed analysis of that data until it is all</p>	<p style="text-align: right;">Page 13</p> <p>1 products. 2 Rather, I have been interested to see to 3 what extent we have coverage by the defendants in 4 response to the requests that have been asked of 5 them. My approach will be, once we have all of it, 6 to undertake a more careful analysis of that 7 information to see whether it comports with publicly 8 available information, whether there is consistency 9 across defendants, issues that would go to the 10 integrity of the data. 11 Q. You also mentioned that the 12 interrogatories contained some responses relating to 13 the pricing of lights and regular cigarettes. 14 Correct? 15 A. At least in part. I don't know if I have 16 a complete universe, but I have some answers to 17 interrogatories concerning pricing. 18 Q. Have you reviewed, to use the word you 19 used, the integrity of those responses? 20 A. On pricing? 21 Q. Yes. 22 A. All that I've done is take it at its face</p>

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<p style="text-align: right;">Page 14</p> <p>1 value, and it's consistent -- let me just say this. 2 The statements on pricing that I have seen are 3 consistent with what is generally available in the 4 public domain. 5 Q. One of the statements on pricing in the 6 interrogatory answers is that the defendants have 7 always priced light cigarettes and full flavor 8 cigarettes in a particular brand family at the same 9 price. Correct? 10 MR. GALLAGHER: Objection. Lack of 11 foundation. 12 THE WITNESS: I'm not sure that's the 13 exact wording, but that's in essence what I recall, 14 and that's what's available in the public domain as 15 well. 16 BY MR. MCCARTER: 17 Q. And that statement is consistent with 18 what you've seen in the public domain. Correct? 19 A. Yes. 20 Q. Now, the other category of information 21 you mentioned that you had seen in these discovery 22 responses related to the cost of manufacturing light</p>	<p style="text-align: right;">Page 16</p> <p>1 and non-light cigarettes? 2 A. I have not seen it. The information on 3 cost which the defendants produce is available 4 through their SEC required reporting which comes in 5 the form of 10-Ks, and they do not break down either 6 profitability or cost by different segments within 7 the same line of business. 8 So therefore in a public sense, and 9 that's what I said in my report, publicly available 10 information from the defendants, at least as far as 11 I've been able to determine, does not distinguish 12 between the cost of manufacturing light cigarettes 13 and other cigarettes for a given supplier. 14 Q. Whose expert reports have you read? 15 A. I have read the expert reports of Jack 16 Henningfield, Dr. Peter Shields, Dr. Burns, Dr. Joel 17 Cohen, Dr. George Stiglitz, and the -- I've read his 18 first report, I haven't read Dr. Stiglitz's second 19 report, and I have read the first report of 20 Dr. Jeffrey Harris. 21 Q. Have you spoken with any of those 22 individuals in connection with this case?</p>
<p style="text-align: right;">Page 15</p> <p>1 and full flavor cigarettes. Correct? 2 A. Yes. 3 Q. And have you performed any check on the 4 integrity of that information? 5 A. No. 6 Q. To the best of your knowledge, are those 7 statements by the defendants on that issue consistent 8 with the information you've reviewed in other 9 contexts? 10 MR. GALLAGHER: Objection. Lack of 11 foundation. 12 THE WITNESS: I can't answer that 13 question because I haven't done the analysis, as I 14 said, using defendant data on operating profits 15 between lights and other cigarettes. And that in 16 part obviously depends on the cost of manufacturing 17 different categories of cigarettes. I can only do 18 that analysis once I have the full set of 19 information. 20 BY MR. MCCARTER: 21 Q. Is there information in the public domain 22 relating to the relative cost of manufacturing lights</p>	<p style="text-align: right;">Page 17</p> <p>1 A. I was at a meeting in which Dr. Harris 2 was present, yes. 3 Q. When was that meeting? 4 A. Probably in mid January of 2005. 5 Q. And what was discussed at the meeting? 6 A. The basic purpose of the meeting was to 7 enable -- really two-fold, to enable the plaintiffs' 8 attorneys to describe to several experts or their 9 representatives, their staff, some of the issues in 10 this case, schedules and the like, so that everybody 11 understood it. That's something that had to be done 12 on several different occasions. 13 And then secondly, at least from my 14 perspective, was to lay out to the plaintiffs' 15 attorneys, I really wasn't too concerned about others 16 that were present, the two methodologies in broad 17 terms that are described in my February 28th -- I 18 think it's the end of February report, and then 19 implemented in my end of March report. 20 Q. Who else besides you and Dr. Harris was 21 at this meeting? 22 A. There were several plaintiff attorneys.</p>

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